

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL CASE NO. 1:10cv290

JOHN P. WALKER and DONNA S. WALKER, Co-Trustees)
of the 2004 Walker Family Trust,)

Plaintiffs,)

vs.)

QUEENS GAP MOUNTAIN, LLC, a North Carolina limited)
liability company; **DEVINSHIRE LAND DEVELOPMENT,**)
LLC, a North Carolina limited liability company; **QUEENS**)
GAP ACQUISITION, LLC, a Delaware limited liability)
company; **COVE CREEK, LLC**, a North Carolina limited)
liability company; **D. F. McCARTHY INVESTMENTS XVIII,**)
LLC, an Ohio limited liability company, **QUEENS GAP**)
HOLDING COMPANY, LLC, an Ohio limited liability company,)
DEVIN McCARTHY, individually; **JANIS L. McCARTHY,**)
individually and as Trustee of the DEVIN F. McCARTHY)
REVOCABLE TRUST dated September 14, 1994; and)
KEITH VINSON, individually,)

Defendants.)

ORDER

THIS MATTER is before the Court on the following:

1. Janis L. McCarthy's Motion to Dismiss Plaintiffs' Complaint [Doc. 25];
and
2. The Motion to Compel Arbitration and to Stay Proceedings [Doc. 27] of

the Defendants D. F. McCarthy Investments XVIII, LLC; Queens Gap Holding Company, LLC; Devin McCarthy and Janis McCarthy (the McCarthy Defendants).¹

____ Also before this Court are the cases of Klopfers, et al. v. Queens Gap Mountain, LLC, et al., Civil Case No. 1:10cv155, and Myers, et al. v. Queens Gap Mountain, LLC, et al., Civil Case No. 1:10cv171. The facts, legal issues and causes of action asserted in the Complaint in this matter are virtually identical to those in Klopfers and Myers,² and the same attorneys appear in all three cases. Even though the cases have not been consolidated, the decisions of this Court in the Orders being entered contemporaneously herewith in Klopfers and Myers address and dispose of nearly all of the issues raised by the motions currently before the Court in this matter. The Orders in Klopfers and Myers are, therefore, incorporated herein, and the current motions will be disposed of in accord therewith.

¹Janis McCarthy's motion to stay and to compel arbitration is conditioned on the denial of her earlier filed motion to dismiss. Because the Court finds that arbitration should be compelled, the motion to dismiss is denied as moot. The Court expresses no opinion as to whether Janis may renew this motion before the arbitration panel.

²Plaintiff John P. Walker provided an affidavit almost identical to those submitted in the Klopfers and Myers cases. [Docs. 33-3]. Having reviewed this affidavit the Court is compelled to find that, like the plaintiffs in Klopfers and Myers, the Plaintiffs in the present case were not unsophisticated purchasers.

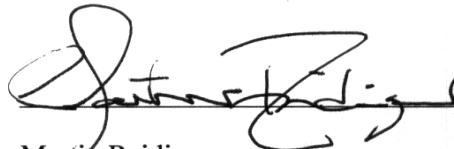
IT IS, THEREFORE, ORDERED that the Motion to Compel Arbitration and to Stay Proceedings [Doc. 27] of the Defendants D. F. McCarthy Investments XVIII, LLC; Queens Gap Holding Company, LLC; Devin McCarthy and Janis McCarthy is hereby **GRANTED** and arbitration is compelled.

IT IS FURTHER ORDERED that Janis L. McCarthy's Motion to Dismiss Plaintiffs' Complaint [Doc. 25] is hereby **DENIED** as moot.

IT IS FURTHER ORDERED that arbitration having been compelled, this matter is hereby **STAYED**.

IT IS SO ORDERED.

Signed: September 14, 2011


Martin Reidinger
United States District Judge

